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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,802	10/09/2001	George H. Small	104410-100	6750

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WASHINGTON, DC 20005-3502

EXAMINER

PHILOGENE, PEDRO

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 12/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/972,802

Applicant(s)

SMALL, GEORGE H.

Examiner

Pedro Philogene

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 17-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

Allowable Subject Matter

Prosecution on the merits of this application is reopened on claims 1-11,17-25, considered unpatentable for the reasons indicated below:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8,10 are rejected under 35 U.S.C. 102(b) as being anticipated by Merritt (5,006,830).

With respect to claim 1, Merritt discloses an umbilical cod clamp (10) comprising a pair of arms (11,12) each having a length in a generally V-shaped configuration having rear end portion associated at an apex and having free end forward end portions normally disposed in a spaced apart relation; as best seen in FIG.1, and being movable towards each other for clamping an umbilical cord between the arms; a flared portion (21,22) at the end of each arm; a grasping portion (28,32) that is disposed on each arm transversely to the length thereof and sufficiently sized and shaped to receive a finger or tool so as to facilitate grasping and closing of the clamp; and a locking portion (15,16,18,19) for securing the arms together when the clamp is closed; as best seen in Fig.2.

The fact that flared portions (21,22) are of better size and shape is not evidence that the grasping portions (28,32) are not also each capable of receiving a finger.

Grasping portions (28,32) are also inherently sufficiently sized and shaped to receive a "tool" inasmuch as virtually any size/shape arm portion is capable of receiving some known tool (e.g., pliers). The fact that Merritt does not suggest using portions (28,32) for grasping the clamp is irrelevant.

With respect to claims 2-8,10, Merritt discloses all the limitations; as set forth in column 3, lines 29-68; and as best seen in FIGS.1-5.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merritt (5,006,830).

With respect to claims 9,11, it is noted that Merritt did not teach of a grasping portion that is at least about two-thirds of the distance from the rear end portion to the free forward end and at least 1.5 times as wide as a width of the arm and has a length of at least 0.5 cm. However, applicant fails to establish the criticality of such dimensions and the examiner believes that any dimensions could have been used since the device would have performed equally as well with any given dimensions depending on the size of the clamp. And, as to the location of the grasping portion, as claimed by applicant, it would have been obvious to one having ordinary skill in the art at the time invention to place the grasping portion anywhere along the length of the arms, since it has been held

that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

Claims 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merritt (5,006,830) in view of Dorsey (6,132,447).

With respect to claims 17-25, it is noted that Merritt teaches all the limitations, except for an identification means comprising a gender-identifying color associated with portion of the clamp to facilitate identification of the gender of the baby; as claimed by applicant. However, in a similar art, Dorsey evidences the use of a device to provide umbilical devices with gender-identifying color coding (blue for boys and pink for girls) for readily recognizable indicia associated with newborn baby. Inasmuch as one of ordinary skill in the art would recognize that this newborn baby indicia would also be advantageous subsequent to umbilical cord severing, it would have been obvious to similarly form the Merritt clamp with such color-coding. Whether the entire clamp is formed of blue or pink or a portion remains a neutral color is clearly a matter of personal preference with no criticality having been advanced for either choice.

Conclusion

A shortened statutory period for reply to this action is set to expire **THREE MONTHS** from the mailing date of this action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Pedro Philogene whose telephone number is (703) 308-2252. The examiner can normally be reached on Monday to Friday 6:30 AM to 4:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P Shaver can be reached on (703) 308-2582. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Pedro Philogene
December 04, 2003


PEDRO PHILOGENE
PRIMARY EXAMINER